

**U.S. District Court
District of Montana (Missoula)
CIVIL DOCKET FOR CASE #: 9:18-cv-00154-DWM**

American Civil Liberties Union et al v. Department of Defense
et al
Assigned to: Judge Donald W. Molloy
Cause: 05:552 Freedom of Information Act

Date Filed: 09/04/2018
Jury Demand: None
Nature of Suit: 895 Freedom of
Information Act
Jurisdiction: Federal Question

Plaintiff

American Civil Liberties Union

represented by **Alexander H. Rate**
AMERICAN CIVIL LIBERTIES UNION
OF MONTANA
PO Box 9138
Missoula, MT 59807
406-203-3375
Email: ratea@aclumontana.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Brett Max Kaufman
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION – NEW YORK
125 Broad Street
18th Floor
New York, NY 10004
212-549-2500
Fax: 212-549-2654
Email: bkaufman@aclu.org
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Emerson Sykes
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION – NEW YORK
125 Broad Street
18th Floor
New York, NY 10004
(212) 549-2500
Fax: (212) 549-2654
Email: esykes@aclu.org
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Plaintiff

**American Civil Liberties Union
Foundation**

represented by **Alexander H. Rate**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Brett Max Kaufman
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Emerson Sykes
(See above for address)
LEAD ATTORNEY
PRO HAC VICE

ATTORNEY TO BE NOTICED

Plaintiff

**American Civil Liberties Union of
Montana Foundation, Inc.**

represented by **Alexander H. Rate**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Brett Max Kaufman
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Emerson Sykes
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

V.

Defendant

Department of Defense

represented by **Mark Steger Smith**
U.S. ATTORNEY'S OFFICE –
BILLINGS
2601 Second Avenue North
Suite 3200
Billings, MT 59101
406-657-6101
Fax: 657-6058
Email: mark.smith3@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Victoria L. Francis
U.S. ATTORNEY'S OFFICE –
BILLINGS
2601 Second Avenue North
Suite 3200
Billings, MT 59101
406-247-4633
Fax: 406-657-6058
Email: victoria.francis@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

**DEPARTMENT OF HOMELAND
SECURITY**

represented by **Mark Steger Smith**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Victoria L. Francis
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Department of the Interior

represented by **Mark Steger Smith**
(See above for address)
LEAD ATTORNEY

*ATTORNEY TO BE NOTICED***Victoria L. Francis**

(See above for address)

*LEAD ATTORNEY**ATTORNEY TO BE NOTICED***Defendant****Department of Justice**represented by **Mark Steger Smith**

(See above for address)

*LEAD ATTORNEY**ATTORNEY TO BE NOTICED***Victoria L. Francis**

(See above for address)

*LEAD ATTORNEY**ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
09/04/2018	<u>1</u>	COMPLAINT against All Defendants, filed by American Civil Liberties Union, American Civil Liberties Union Foundation, American Civil Liberties Union of Montana Foundation, Inc.. (Attachments: # <u>1</u> Exhibit A–Emails, # <u>2</u> Exhibit B–Response Letter, # <u>3</u> Exhibit C–Emails, # <u>4</u> Exhibit D–Report 2017, # <u>5</u> Exhibit E–HS Report 2017, # <u>6</u> Civil Cover Sheet) (TAG) (Entered: 09/04/2018)
09/04/2018		Filing fee: \$ 400, receipt number 0977–2188899 (TAG) (Entered: 09/04/2018)
09/04/2018	<u>2</u>	Summons Issued as to Department of Homeland Security, Department of Defense, Department of Justice, Department of the Interior. Originals mailed to counsel for plaintiffs (TAG) (Entered: 09/04/2018)
09/04/2018	<u>3</u>	Corporate Disclosure Statement by American Civil Liberties Union, American Civil Liberties Union Foundation, American Civil Liberties Union of Montana Foundation, Inc. as to American Civil Liberties Union and American Civil Liberties Union Foundation. (Rate, Alexander) (NOS) (Entered: 09/04/2018)
09/04/2018	<u>4</u>	Corporate Disclosure Statement by American Civil Liberties Union, American Civil Liberties Union Foundation, American Civil Liberties Union of Montana Foundation, Inc. as to American Civil Liberties Union of Montana Foundation, Inc. (Rate, Alexander) (NOS) (Entered: 09/04/2018)
09/06/2018	<u>5</u>	MOTION Brett Max Kaufman to Appear Pro Hac Vice (Filing fee \$ 255 receipt number 0977–2190816.) Alexander H. Rate appearing for Plaintiffs American Civil Liberties Union, American Civil Liberties Union Foundation, American Civil Liberties Union of Montana Foundation, Inc. (Attachments: # <u>1</u> Affidavit Brett Max Kaufman, # <u>2</u> Text of Proposed Order PO PHV) (Rate, Alexander) (Entered: 09/06/2018)
09/07/2018	<u>6</u>	ORDER granting <u>5</u> Motion to Appear Pro Hac Vice for Brett Max Kaufman. Acknowledgment of PHV Order due within fifteen (15) days. Signed by Judge Donald W. Molloy on 9/7/2018. (NOS) (Entered: 09/07/2018)
09/10/2018	<u>7</u>	ORDER: Preliminary Pretrial Statement due by 10/26/2018. Proposed Case Management Plan due by 12/10/2018. Signed by Judge Donald W. Molloy on 9/10/2018. (NOS) (Entered: 09/10/2018)
09/12/2018	<u>8</u>	NOTICE of Acknowledgment of Pro Hac Vice Order by American Civil Liberties Union, American Civil Liberties Union Foundation, American Civil Liberties Union of Montana Foundation, Inc. (Kaufman, Brett) (Entered: 09/12/2018)
09/20/2018	<u>9</u>	Proof of Service filed by American Civil Liberties Union, American Civil Liberties Union Foundation, American Civil Liberties Union of Montana Foundation, Inc.. Service by certified mail on 09/17/18. (Kaufman, Brett) (Entered: 09/20/2018)
09/20/2018	<u>10</u>	Proof of Service filed by American Civil Liberties Union, American Civil Liberties Union Foundation, American Civil Liberties Union of Montana Foundation, Inc..

		Service by certified mail on 09/14/18. (Kaufman, Brett) (Entered: 09/20/2018)
09/20/2018	<u>11</u>	Proof of Service filed by American Civil Liberties Union, American Civil Liberties Union Foundation, American Civil Liberties Union of Montana Foundation, Inc.. Service by certified mail on 09/20/18. (Kaufman, Brett) (Entered: 09/20/2018)
09/20/2018	<u>12</u>	Proof of Service filed by American Civil Liberties Union, American Civil Liberties Union Foundation, American Civil Liberties Union of Montana Foundation, Inc.. Service by certified mail on 09/14/18. (Kaufman, Brett) (Entered: 09/20/2018)
09/20/2018	<u>13</u>	Proof of Service filed by American Civil Liberties Union, American Civil Liberties Union Foundation, American Civil Liberties Union of Montana Foundation, Inc.. Service by certified mail on 09/14/18. (Kaufman, Brett) (Entered: 09/20/2018)
09/25/2018		Set/Reset Deadlines: Answer due date as to all Defendants. (NOS) (Entered: 09/25/2018)
10/25/2018	<u>14</u>	MOTION Emerson Sykes to Appear Pro Hac Vice (Filing fee \$ 255 receipt number 0977-2214576.) Alexander H. Rate appearing for Plaintiffs American Civil Liberties Union, American Civil Liberties Union Foundation, American Civil Liberties Union of Montana Foundation, Inc. (Attachments: # <u>1</u> Affidavit Emerson S, # <u>2</u> Text of Proposed Order) (Rate, Alexander) (Entered: 10/25/2018)
10/26/2018	<u>15</u>	ORDER granting <u>14</u> Motion to Appear Pro Hac Vice of Emerson Sykes. Acknowledgment of PHV Order due within fifteen days of the date of this Order. Signed by Judge Donald W. Molloy on 10/26/2018. (NOS) (Entered: 10/26/2018)
10/31/2018	<u>16</u>	NOTICE of Acknowledgment of Pro Hac Vice Order by American Civil Liberties Union, American Civil Liberties Union Foundation, American Civil Liberties Union of Montana Foundation, Inc. re <u>15</u> Order on Motion to Appear Pro Hac Vice (Sykes, Emerson) (Entered: 10/31/2018)
10/31/2018	<u>17</u>	ANSWER to <u>1</u> Complaint, by DEPARTMENT OF HOMELAND SECURITY, Department of Defense, Department of Justice, Department of the Interior. (Smith, Mark) (Entered: 10/31/2018)
11/19/2018	<u>18</u>	Unopposed MOTION for Extension of Time to File <i>Pretrial Deadlines</i> Mark Steger Smith appearing for Defendants DEPARTMENT OF HOMELAND SECURITY, Department of Defense, Department of Justice, Department of the Interior (Attachments: # <u>1</u> Text of Proposed Order) (Smith, Mark) (Entered: 11/19/2018)
11/20/2018	<u>19</u>	ORDER granting <u>18</u> Unopposed MOTION for Extension of Time to File <i>Pretrial Deadlines</i> . Preliminary Pretrial Statement due by 1/10/2019. Proposed case management plan due by 1/27/2019. The September 10, 2018, Order remains in full force and effect in all other respects. Signed by Judge Donald W. Molloy on 11/20/2018. (NOS) (Entered: 11/20/2018)
01/09/2019	<u>20</u>	MOTION for Extension of Time to File <i>Documents</i> Victoria L. Francis appearing for Defendants DEPARTMENT OF HOMELAND SECURITY, Department of Defense, Department of Justice, Department of the Interior (Attachments: # <u>1</u> Text of Proposed Order) (Francis, Victoria) (Entered: 01/09/2019)
01/10/2019	<u>21</u>	AFFIDAVIT/DECLARATION re <u>19</u> Order Setting,, Terminate Motions, <i>[Declaration of Michelle Bartlett, FOIA Officer for Dept of Defense, Army Corps of Engineers with attached Vaughn Index]</i> by Department of Defense. (Attachments: # <u>1</u> Vaughn Index for Dept of Defense, Army Corps of Engineers) (Francis, Victoria) (Entered: 01/10/2019)
01/10/2019	<u>22</u>	ORDER denying <u>20</u> Motion for Extension of Time to File Signed by Judge Donald W. Molloy on 1/10/2019. (CDH) (Entered: 01/10/2019)
01/10/2019	<u>23</u>	PRELIMINARY PRETRIAL STATEMENT by American Civil Liberties Union, American Civil Liberties Union Foundation, American Civil Liberties Union of Montana Foundation, Inc.. (Sykes, Emerson) (Entered: 01/10/2019)
01/10/2019	<u>24</u>	AMENDED DOCUMENT by American Civil Liberties Union, American Civil Liberties Union Foundation, American Civil Liberties Union of Montana Foundation, Inc.. Amendment to <u>23</u> Preliminary Pretrial Statement . (Sykes, Emerson) (Entered: 01/10/2019)

01/10/2019	<u>25</u>	PRELIMINARY PRETRIAL STATEMENT by DEPARTMENT OF HOMELAND SECURITY, Department of Justice, Department of the Interior. (Smith, Mark) (Entered: 01/10/2019)
01/10/2019	<u>26</u>	Redaction Index by DEPARTMENT OF HOMELAND SECURITY, Department of Justice, Department of the Interior. (Attachments: # <u>1</u> FBI's Glomar letter dated 01-09-2019 sent to the ACLU re this lawsuit) (Smith, Mark) (Entered: 01/10/2019)
01/10/2019	<u>27</u>	AMENDED DOCUMENT by DEPARTMENT OF HOMELAND SECURITY, Department of Defense, Department of Justice, Department of the Interior. Amendment to <u>25</u> Preliminary Pretrial Statement [<i>UNITED STATES' AMENDED PRELIMINARY PRETRIAL STATEMENT</i>]. (Smith, Mark) (Entered: 01/10/2019)
01/25/2019	<u>28</u>	JOINT DISCOVERY PLAN by DEPARTMENT OF HOMELAND SECURITY, Department of Defense, Department of Justice, Department of the Interior. (Francis, Victoria) (Entered: 01/25/2019)
01/28/2019	<u>29</u>	Case Management Order: Amended Pleadings due by 2/22/2019. Discovery due by 4/12/2019. Joint Record due by 4/19/2019. Summary Judgment Motion due by 5/1/2019. Cross Motions due by 5/22/2019. Signed by Judge Donald W. Molloy on 1/28/2019. (NOS) (Entered: 01/28/2019)
04/12/2019	<u>30</u>	AMENDED DOCUMENT by Department of Defense. Amendment to <u>21</u> Affidavit/Declaration, [<i>AMENDED DECLARATION OF MICHELLE BARTLETT, FOIA Officer for Dept. of Defense, Army Corps of Engineers</i>]. (Attachments: # <u>1</u> Appendix – Army Corps of Engineer's First Amended and Supplemental Vaughn Index) (Smith, Mark) (Entered: 04/12/2019)
04/12/2019	<u>31</u>	AFFIDAVIT/DECLARATION OF <i>SALLY SHEEKS, Information Specialist in FOIA Office in BLM Montana–Dakotas State Office</i> by Department of the Interior. (Attachments: # <u>1</u> Appendix – Bureau of Land Management's Vaughn Index) (Smith, Mark) (Entered: 04/12/2019)
04/12/2019	<u>32</u>	AFFIDAVIT/DECLARATION OF <i>DAVID HARDY, FBI Section Chief of the Record/Information Dissemination Section of the Information Management Division</i> by Department of Justice. (Attachments: # <u>1</u> Exhibit A – ACLU letter to FBI dated 4-2-2018, # <u>2</u> Exhibit B – FBI letter to ACLU dated 4-6-2018, # <u>3</u> Exhibit C – FBI letter to ACLU dated 4-6-2018, # <u>4</u> Exhibit D – FBI letter to ACLU dated 4-24-2018, # <u>5</u> Exhibit E – FBI letter to ACLU dated 1-09-2019 (errata stated as 1-09-2018)) (Smith, Mark) (Main Document 32 replaced on 4/12/2019) (EMH). (Attachment 1 replaced on 4/15/2019) (EMH). (Attachment 2 replaced on 4/15/2019) (EMH). (Attachment 3 replaced on 4/15/2019) (EMH). (Attachment 4 replaced on 4/15/2019) (EMH). (Attachment 5 replaced on 4/15/2019) (EMH). Modified on 4/15/2019 Per IT documents downloaded and refiled so they could be accessed on CM ECF(EMH). (Entered: 04/12/2019)
04/12/2019	<u>33</u>	AFFIDAVIT/DECLARATION OF <i>GREGORY BRIDGES, Acting Chief of Disclosure Branch, Records Management Division, Federal Emergency Management Agency</i> by DEPARTMENT OF HOMELAND SECURITY. (Attachments: # <u>1</u> Exhibit A – Letter from ACLU dated 01-23-2018, # <u>2</u> Exhibit B – Letter from FEMA to ACLU dated 3-23-2018, # <u>3</u> Exhibit C – Letter from FEMA to ACLU dated 8-31-2018, # <u>4</u> Exhibit D – Systems searched & search terms, # <u>5</u> Exhibit E – FEMA's Vaughn Index) (Smith, Mark) (Attachment 1 replaced on 4/15/2019 due to inability to open correctly; NEF regenerated.) (NOS) (Entered: 04/12/2019)
04/12/2019	<u>34</u>	AFFIDAVIT/DECLARATION OF <i>TERRI MILLER, FOIA Officer for Transportation Security Administration</i> by DEPARTMENT OF HOMELAND SECURITY. (Smith, Mark) (Entered: 04/12/2019)
04/19/2019	<u>35</u>	REDACTION [<i>JOINT RECORD containing redacted documents</i>] by DEPARTMENT OF HOMELAND SECURITY, Department of Defense, Department of Justice, Department of the Interior. (Attachments: # <u>1</u> Appendix 35-1 – ACE_1-68 (redacted bates no. docs for Army Corps of Engineers), # <u>2</u> Appendix 35-2 – BLM_1-167 (Bureau of Land Management), # <u>3</u> Appendix 35-3 – FBI_1-18, # <u>4</u> Appendix 35-4 – FEMA_1-253 (Federal Emergency Management Agency – Part 1), # <u>5</u> Appendix 35-5 – FEMA_254-506 (Part 2), # <u>6</u> Appendix 35-6 – OLC_1-20 (Dept. of Justice, Office of Legal Counsel), # <u>7</u> Appendix 35-7 – TSA_1-24 (Transportation Security Administration), # <u>8</u> Appendix 35-8 – DHS-I&A_1-286 (Dept. of Homeland

		Security, Office of Intelligence and Analysis)) (Francis, Victoria) (Entered: 04/19/2019)
04/26/2019		Remark: Joint Record (ACE, BLM, FBI) received and placed on shelf in Missoula clerk's office (3 notebooks). (NOS) (Entered: 04/26/2019)
04/26/2019	<u>36</u>	AFFIDAVIT/DECLARATION re <u>30</u> Amended Document, [<i>Second Supplemental Declaration of Michelle Bartlett</i>] by Department of Defense. (Smith, Mark) (Entered: 04/26/2019)
04/26/2019	<u>37</u>	AFFIDAVIT/DECLARATION OF PAUL P. COLBORN, <i>Special Counsel, Office of Legal Counsel</i> by Department of Justice. (Attachments: # <u>1</u> Exhibit A – ACLU ltr dated 01–23–2018, # <u>2</u> Exhibit B – DOJ, Office of Legal Counsel ltr to ACLU dated 1–31–2018, # <u>3</u> Exhibit C – DOJ, OLC ltr to ACLU dated 1–23–2019 advising no responsive documents) (Smith, Mark) (Entered: 04/26/2019)
05/01/2019	<u>38</u>	REDACTION [<i>FIRST SUPPLEMENTAL JOINT RECORD supplementing Doc. 35–8</i>] by DEPARTMENT OF HOMELAND SECURITY. (Attachments: # <u>1</u> Appendix 38–1 – DHS–I&A_287–464 (Dept. of Homeland Security, Office of Intelligence and Analysis)) (Francis, Victoria) (Entered: 05/01/2019)
05/01/2019	<u>39</u>	AFFIDAVIT/DECLARATION OF BRENDAN HENRY by DEPARTMENT OF HOMELAND SECURITY. (Attachments: # <u>1</u> Exhibit A – ACLU letter dated 1/23/2018, # <u>2</u> Exhibit B – DHS, I&A letter dated 2/16/2018, # <u>3</u> Exhibit C – ACLU and I&A emails, 2/2018 to 3/2018, # <u>4</u> Exhibit D – I&A email dated 6/22/18, # <u>5</u> Exhibit E – Vaughn Index) (Francis, Victoria) (Entered: 05/01/2019)
05/01/2019	<u>40</u>	MOTION for Summary Judgment Victoria L. Francis appearing for Defendants DEPARTMENT OF HOMELAND SECURITY, Department of Defense, Department of Justice, Department of the Interior (Francis, Victoria) (Entered: 05/01/2019)
05/01/2019	<u>41</u>	Statement of Undisputed Fact re: <u>40</u> MOTION for Summary Judgment by DEPARTMENT OF HOMELAND SECURITY, Department of Defense, Department of Justice, Department of the Interior filed by DEPARTMENT OF HOMELAND SECURITY, Department of Defense, Department of Justice, Department of the Interior. (Francis, Victoria) (Entered: 05/01/2019)
05/01/2019	<u>42</u>	Brief/Memorandum in Support re <u>40</u> MOTION for Summary Judgment filed by DEPARTMENT OF HOMELAND SECURITY, Department of Defense, Department of Justice, Department of the Interior. (Francis, Victoria) (Entered: 05/01/2019)